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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/610,586	07/05/2000	Larry A Spino	32234-164775	5218

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EXAMINER

CHEUNG, WILLIAM K

ART UNIT	PAPER NUMBER
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1713

DATE MAILED: 04/30/2003

13

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/610,586

Applicant(s)

SPINO ET AL.

Examiner

William K Cheung

Art Unit

1713

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED April 22, 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
(a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ they raise the issue of new matter (see Note below);
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None.Claim(s) objected to: None.Claim(s) rejected: 1-9.Claim(s) withdrawn from consideration: None.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____



DAVID W. WU

SUPERVISORY PATENT EXAMINER
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Continuation of 5. does NOT place the application in condition for allowance because: Applicants' request for reconsideration filed April 22, 2003 has been fully considered. However, the arguments filed on April 22, 2003 are not persuasive. Regarding the 112, first paragraph rejection, applicants continue to insist that the high degree of experimental error in Masino is on the observed productivity. However, the examiner does not find this argument persuasive for the same reasons set forth from paragraph 6 of final rejection (Paper No. 10). Applicants must recognize that an error in productivity may be caused by an error in titanium content or vice versa. Regarding the rejection of claims 1-2, 5-8, applicants argue that McCullough et al. recite that "antioxidants which may be most useful in the composition of the present invention include primary antioxidants or phenolic type". However, applicants still fail to recognize that such language "may be" does not teach away from applicants' invention because the recited "may be" language does not teach one to must use an antioxidant. Regarding the rejection of claim 3, applicants basically repeat the same argument submitted in Paper No. 9 that has been found not persuasive. Therefore, the rejection of claim 3 stands rejected for the reasons adequately set forth from paragraph 9 of final rejection (Paper No. 10). Regarding claim 1, 4 and 9, applicants argue that Kobayashi et al. recite that the invention may contain other additives such as stabilizers, neutralizing agents, antistatic agents, lubricants, etc. However, applicants must recognize that such language "may contain" does not teach away from applicants' invention because such language "may contain" does not teach one of ordinary skill in art must use an additive. Therefore, claims 1, 4 and 9 stand rejected for the reasons adequately set forth from paragraphs 10-11 of final rejection (Paper No. 10).

WKE